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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re B.H., a Person Coming Under the Juvenile Court
Law.

C078073

THE PEOPLE,

(Super. Ct. No. 70660)

Plaintiff and Respondent,

v.

B.H.,

Defendant and Appellant.

Not far from a high school football game, the minor B.H. was found with a gun in his backpack. He appeals from the denial of his suppression motion.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The minor moved to suppress, and a hearing was held. The hearing included testimony from the vice-principal who learned the minor might be carrying a gun, as well as the officer who found the gun.

The Vice-Principal's Testimony

The high school vice-principal testified that the day the gun was discovered, she was performing supervisory duties at a home football game. Two to three thousand spectators were in attendance. The day before the game, the vice-principal received a call from the principal of a nearby school. The principal relayed what he had been told by a student: Six days ago, at the last home football game at the vice-principal's school, the minor had shown the student a gun while they were in the stands. The principal told the vice-principal the name of the student who saw the minor with the gun. After the call, the vice-principal notified the school resource officer, the school administrative team, and the campus security team.

The night of the incident, the vice-principal spotted the minor after he entered the gated ticket collection area; he was wearing a backpack. The vice-principal was familiar with the minor. He had been a student at the high school, and she had spoken to him many times.

The vice-principal motioned to the minor and asked him to step aside. She told him she needed to check to make sure he didn't have anything he shouldn't have. She did not say the word "gun." She explained that she, the minor, and one of the assistant teachers would go to the nearby gym. The minor asked if he could go to his car first. The vice-principal said that was fine, and the minor left through the gate.

The vice-principal followed the minor, but let their distance increase to a safe distance, which she estimated was about 45 feet. Her goal was to keep the minor in eyesight. As she followed, she radioed for the police and for the assistant teacher. She also flagged down a police car driving through the parking lot. She testified, "I let them

know this was a student that had possibly had a weapon at the last game and that I had taken him aside and it was possible that he had a gun.” She also told the officers that she saw the minor fidgeting as he walked along the sidewalk; he appeared to take something from his backpack and put it into his pants. She told the officers to be careful.

For “a couple of minutes,” the vice-principal lost sight of the minor. She had stopped following him when she reached the sidewalk at the end of the campus. She stood there for a few minutes before receiving a message that the police needed to take her report. She crossed the street and saw the minor in a police car.¹

The Arresting Officer’s Testimony

The officer who found the gun testified that on that night, he was in his patrol car with his partner. Around 6:00 p.m., he was contacted by the school resource officer, who said the minor reportedly had a handgun at a prior football game.

Sometime later, the officer was flagged down by the vice-principal, who pointed to the minor and said, “Hey, that’s [the minor] right there. He was fidgeting and I think he’s got a gun.” The officer watched the minor walk across the parking lot and then cross Thornton Road.

The minor was wearing a backpack on his back, with the straps in front. The officer detained the minor and performed a cursory patdown search of the outside of his backpack. The officer testified he performed the patdown search for his safety and for the safety of the minor. When he felt something that felt like a gun, he handcuffed the minor. Then, checking the backpack, he found a gun.

¹ At the hearing, the vice-principal was asked if any cars were in the area the minor was walking to. She said the opposing team’s busses were in that area, but it was not the parking lot. On cross, the vice-principal testified that while it is not common to park in the residential area surrounding the campus (the student parking lot is mainly used for game parking) someone walking to their car might not necessarily be walking to a place on campus.

As to why he stopped the minor, the officer initially testified “the reason I detained [the minor] is because he Jaywalked.” Later, however, the officer conceded, “I made a mistake on the statute.” Crossing Thornton Road was not jaywalking under the statute he had in mind. But later when asked if he was going to stop the minor after the vice-principal pointed and said he had the gun, the officer testified, “I was.”

The Juvenile Court’s Ruling

The juvenile court denied the suppression motion, explaining: “if somebody is on the school premises suspected of having a weapon, subject to a search and then leaves, and in one continuous transaction is stopped by police officers who have information from a reliable source, they have reasonable suspicion. They have . . . a reasonable basis for conducting the search, if nothing else, for officer safety, again, based on the information they have”

The minor thereafter admitted to possessing a firearm on public school grounds. The juvenile court adjudged him a ward of the court and committed him to juvenile hall for 60 days, awarding credit for 25 days and suspending the balance pending successful completion of probation.

DISCUSSION

On appeal, the minor contends the detention and patdown violated his Fourth Amendment rights, and thus, the juvenile court erred in denying his motion to suppress. He argues there was no legal basis for detaining him for jaywalking, and the officer lacked reasonable suspicion to believe he was armed with a gun. At most, the officer knew he had a gun at the last game—but not that he presently had a gun. Further, the officer was the fourth person in the chain of a purportedly anonymous tip, the officer had no prior relationship with the informant, and thus, he had no basis for gauging the reliability of the tip—nor did he corroborate it.

We conclude the trial court properly denied the motion to suppress as both the detention and subsequent patdown were lawful.²

Brief investigative stops are permitted if an officer has “reasonable suspicion” or put differently, “ ‘a particularized and objective basis for suspecting the particular person stopped of criminal activity.’ ” (*Navarette v. California* (2014) 572 U.S. 393, 396 [134 S.Ct. 1683, 188 L.Ed.2d 680].) Though a hunch is not reasonable suspicion, the level of suspicion required is “ ‘considerably less than proof of wrongdoing by a preponderance of the evidence,’ ” and “ ‘obviously less’ ” than probable cause. (*Id.* at p. 398.) Reasonable suspicion is based on “the totality of the circumstances.” (*Id.* at p. 397.)

If an underlying detention is lawful, an officer may, for his protection, perform a reasonable search for weapons if he has reason to believe he is dealing with “an armed and dangerous individual.” (*Terry v. Ohio* (1968) 392 U.S. 1, 27 [88 S.Ct. 1868, 20 L.Ed.2d 889]; *People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.) Again, probable cause is not required, nor must the officer be absolutely certain the individual is armed. (*Terry v. Ohio*, at p. 27; *People v. Avila*, at p. 1074.) Rather the lawfulness of the patdown turns on “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” (*Terry v. Ohio* at p. 27.)

Finally, if a frisk “reveals a hard object that might be a weapon, the officer is justified in removing the object into view.” (*People v. Limon* (1993) 17 Cal.App.4th 524, 535–536.)

In reviewing a ruling on a suppression motion, “[w]e defer to the trial court’s factual findings, express or implied, where supported by substantial evidence,” but we

² As we conclude the detention and patdown were lawful under *Terry v. Ohio* and its progeny, we do not address the minor’s contention that the search was not lawful as a school search.

exercise independent judgment as to whether, on those facts, the search was reasonable under the Fourth Amendment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Here, both the detention and the patdown were lawful. The officer was initially contacted by the school resource officer, who told him the minor reportedly had a handgun at a prior football game. Later, the officer was flagged down in the high school parking lot by the vice-principal. She repeated to the officer that the minor might have had a gun at the last game. She also said she had taken the minor aside, and he possibly had a gun now. Further, she had seen him fidgeting as he walked, in that he appeared to take something from his backpack and put it into his pants. She also warned the officer to be careful. Based on this information and his own observations, the officer could reasonably deduce that after the vice-principal had taken the minor aside, the minor somehow separated himself and was then walking away from the vice-principal.

The totality of those circumstances constitutes a particularized and objective basis for suspecting the minor was involved in criminal activity, namely, carrying a concealed firearm on a public school campus. Concomitantly, that information would lead a reasonably prudent person to believe there was a danger to officer safety during the detention. Thus, both the detention and the patdown were lawful. And once the officer felt something like a gun during the patdown, he was justified in reaching into the backpack.

The minor's argument that the officer did not know the minor presently had a gun does not render the search unlawful. While the available facts would not lead to absolute certainty that the minor had a gun at present, certainty is not required. (See *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 146 ["the reasonable suspicion standard of *Terry v. Ohio* . . . is not a particularly demanding one, but is, instead, 'considerably less than proof of wrongdoing by a preponderance of the evidence'"].) And here, the available facts — that the minor had a gun at the last game, that he had been taken aside and possibly had a gun now, that he had been seen removing something from his backpack

after he had separated himself from the vice-principal, along with the vice-principal's warning to be careful—would give rise to more than a mere hunch that the minor was presently armed.

Similarly, unavailing is the minor's characterization of the officer as being the fourth person in the chain of an anonymous tip. No one in the chain of information was anonymous. The initial report originated from a student, whose name was passed on to the vice-principal, by the principal of the nearby school. Further, the vice-principal communicated to the officer information she had personally gathered. And, when an unquestionably honest citizen reports criminal activity, rigorous scrutiny of the citizen's basis of knowledge is unnecessary. (*Illinois v. Gates* (1983) 462 U.S. 213, 233-234 [103 S.Ct. 2317, 76 L.Ed.2d 527].)

Finally, the fact that the officer testified he had stopped the minor for jaywalking, only to later concede he was mistaken as to the jaywalking statute does not render the search unlawful. Reliance on the wrong statute does not render the search unlawful if the detention was otherwise lawful. As explained, the facts here sufficed to create reasonable suspicion the minor had a concealed firearm on school grounds and maintained possession of that weapon when he was stopped off of school grounds. Thus, it was objectively reasonable for the officer to detain the minor. Indeed, the officer testified that he was going to stop the minor after the vice-principal pointed to the minor and said he had the gun.

In sum, the detention and patdown search were lawful, and the trial court properly denied the motion to suppress.

DISPOSITION

The orders of the juvenile court are affirmed.

/s/
MURRAY, J.

We concur:

/s/
BUTZ, Acting P. J.

/s/
MAURO, J.